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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,923	02/14/2001	Robert J. McMillen	5104.05	1479

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EXAMINER

LUU, LE HIEN

ART UNIT	PAPER NUMBER
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2141

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Please find below and/or attached an Office communication concerning this application or proceeding.

Application/Control Number: 09/783,923
Art Unit: 2141

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 09/783,923
Filing Date: February 14, 2001
Appellant(s): McMillen, Robert J.

George H. Gates
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/16/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

All claims 154-166 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,321,813

McMillen et al.

06-1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in

scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 154-165 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 86-95 of prior U.S. Patent No. **5,321,813**. This is a double patenting rejection.

(11) Response to Argument

(A) In the remarks, applicant argued in substance that claims 154-165 do not claim the same inventions as claims 86-95 of prior U.S. Patent No. 5,321,813 because it can be seen that the limitations in claims 86-95 lack identity with claim 154-165. Consequently, claims 86-95 of the prior US patent no. 5,321,813 could be literally infringed without literally infringing claims 154-165 in the present application.

Examiner response to point (A), the comparison in the table below shows that infringing claim 86 of the prior US patent no. 5,321,813 can be literally infringing claim 162 in the present application. Although claim 162 of present application does not explicitly claims "a plurality of switch nodes, each switch node comprising a first plurality of input ports, a second plurality of output ports, and means for selectively connecting said input ports to said output ports" as patent no. 5,321,813. Claim 162 claims a plurality of switch nodes connected together in a multistage interconnect network; said plurality of switch nodes in the claim 162 inherently comprise input ports and output ports that selectively connecting said input ports to said output ports.

Claim 162 of present invention	Claim 86 of U.S. Patent No. 5,321,813	Examiner's comments
	(a) a plurality of switch nodes, each switch node comprising a first plurality of input ports, a second plurality of output ports, and means for selectively connecting said input ports to said output ports; and	Applicant claims a plurality of switch nodes which inherently comprise input ports and output ports that selectively connecting to each other

(a) a plurality of switch nodes connected together in a multistage interconnect network using forward channel and back channel signal paths therebetween; and	(b) means for connecting the switch nodes together in a multistage interconnect network, the means for connecting comprising forward channel and back channel signal paths; and	Applicant claims the same limitations
(b) means for multicast transmitting forward channel message from a source connected to the multistage interconnect network to one or more destinations connected to the multistage interconnect network; and	(c) multicast means, operative within the network, for transmitting forward channel messages from a source to one or more destinations; and	Applicant claims the same limitations
(c) means for combining back channel replies received from the destinations into a single result, wherein the result is transmitted on the back channel to the source.	(d) back channel merge means, within each switch node, for combining back channel replies received from the destinations into a single result, wherein the result is transmitted on the back channel to the source.	Applicant claims the same limitations

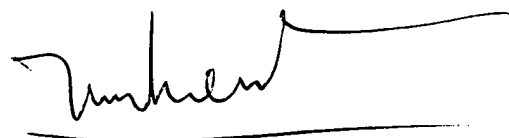
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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



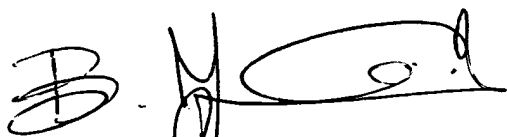
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September 30, 2003

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